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EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YINGXIN HUANG and WENLIN ZHANG

Appeal 2016-002027
Application 13/480,497
Technology Center 2600

Before MICHAEL J. STRAUSS, KEVIN C. TROCK, and AARON W. MOORE, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1, 4, 5, and 8. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

The claims are directed to a method for managing local terminal equipment accessing a network. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A method for managing a local terminal equipment (TE) accessing a network through a mobile terminal (MT), wherein a user identity card having an identity is coupled with the MT, the method comprising:
>
> receiving, by the MT, an authentication request identity message from the local TE;
>
> acquiring, by the MT, the identity of the user identity card and returning the identity of the user identity card to the local TE, so that the local TE performs authentication with the network by using the identity of the user identity card;
>
> receiving, by the MT, an authentication request message forwarded by the local TE from the network;
>
> returning, by the MT, an authentication response message containing an authentication response value to the local TE, wherein the authentication response message is forwarded from the local TE to the network;
>
> receiving, by the MT, the information of the authentication result forwarded by the local TE from the network; and
>
> when the received information of the authentication result indicates that the authentication process is successful, sending, by the MT, key information to the local TE, wherein the key information is used by the local TE in accessing the network; otherwise, not sending key information to the local TE.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Huang et al.	US 8,208,898 B2	June 26, 2012

REJECTIONS

The Examiner made the following rejections:

Claims 1, 4, 5, and 8 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1–19 of U.S. Patent No. 8,208,898.

Claims 1, 4, 5, and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Applicant's Admitted Prior Art (AAPA).

APPELLANTS' CONTENTION[1,2]

"Claims 1, 4, 5, and 8 are novel under 35 U.S.C. § 102(b) because AAPA fails to disclose sending by a MT key information to a local TE only when the MT's received authentication result indicates that an authentication process is successful as required by independent claims 1 and 5." App. Br. 12.

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[1] Appellants do not contest the double patenting rejection.
[2] We note Appellants raise additional contentions of error but we do not reach them as our resolution of this contention is dispositive of the appealed rejections under 35 U.S.C. § 102(b).

ANALYSIS

Double Patenting Rejection

We summarily sustain the obviousness-type double patenting rejections of claims 1, 4, 5, and 8 because Appellants present no arguments contesting the rejections. *See* Manual of Patent Examining Procedure § 1205.02 ("If a ground of rejection stated by the examiner is not addressed in the appellant's brief, that ground of rejection will be summarily sustained by the Board.").

Rejection under 35 U.S.C. § 102(b)

We have reviewed the Examiner's rejections in light of Appellants' arguments the Examiner has erred in rejecting independent claims 1 and 5 under 35 U.S.C. § 102(b) as being anticipated by AAPA. We agree with Appellants' conclusions as to this rejection of the claims.

Appellants contend that, in the AAPA depicted in Figure 3 of drawings, "[terminal equipment (TE)] receives (311) information regarding the authentication result from the network side and, at the same time, the TE receives from the [mobile terminal (MT)], the information regarding the key(s) (312)." App. Br. 8. Appellants argue, contrary to the requirements of claims 1 and 5 which recite "not sending key information to the local TE [when the received information of the authentication result does not indicate that the authentication process is successful]," AAPA omits a triggering action or coordinating mechanism between the two steps. *Id.* Appellants emphasize that, not only is any coordination omitted, but Appellants'

Specification describes how this omission of AAPA causes a problem that is remedied by the invention. App. Br. 13, citing Spec. ¶ 26.[3]

The Examiner responds by finding

> Clearly, the AAPA only sends the security key when the user passes the authentication, see SPEC: *". . . the AAPA shows that a successful authentication will result in the sending of KEY information yet the applicant argues that the AAPA does not teach an unsuccessful authentication and NOT sending - the examiner's position is that a) the AAPA teaches a FAILED authentication (spec - pages 5-6) and b) a security function will inherently either pass/fail the user's credentials*".

Ans. 9.

We disagree with the Examiner. Appellants' Specification unambiguously discloses how AAPA does not require a trigger for the MT to send the information key to the TE. Instead, the Specification discloses that a problem of AAPA is, without such a "binding mechanism," network resources are wasted. Spec. p. 6, ll. 13–16. Although it may be true "that it would be **inherent** for a security function to either allow or fail a user's access to a network, hence terminating the procedure is the only other possibility if the user is not authenticated properly" as found by the Examiner (Final Act. 10), this does not also evidence it is inherent to refrain from sending the claimed information key from the MT to the TE. Although, as found by the Examiner, it may be "WELL KNOWN IN THE ART and also COMMON SENSE, eg. [w]hy have an authentication process

[3] Page 6, lines 13–16 of the Specification, corresponding to paragraph 26 of the cited Printed Publication US 2012/0276874 A1, reads as follows: "In addition, in Step 311 above, the process of the network side sending the authentication result to the TE occurs at the same time of the MT sending the information of key(s) to the TE without a binding mechanism between the two processes, which causes a waste of the network resources."

if you will send the security key when the user authentication fails??" (*id.* at 8), common sense is not a substitute for a clear disclosure that "[t]he keys are ONLY SENT when the user passes authentication" (*id.*) as the Examiner concludes. The Examiner fails to provide sufficient evidence, contrary to Appellants' specific disclosure, it is inherent that, when the received information of the authentication result indicates the authentication process is unsuccessful, no key information is sent to the local TE, as required independent claims 1 and 5. Accordingly, on the record before us, we do not sustain the rejection of independent claims 1 and 5 under 35 U.S.C. § 102(b) as being anticipated by AAPA, nor the rejection of dependent claims 4 and 8, which stand with their respective parent claims.[4]

DECISION

We affirm the Examiner's decision to reject claims 1, 4, 5, and 8 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1–19 of U.S. Patent No. 8,208,898.

We reverse the Examiner's decision to reject claims 1, 4, 5, and 8 under 35 U.S.C. § 102(b).

AFFIRMED

[4] We note in passing, because the rejection is based on anticipation under 35 U.S.C. § 102(b), we need not decide whether, in view of Appellants' specific disclosure to the contrary, it nonetheless would have been *obvious* (i.e., under 35 U.S.C. § 103(a)) to refrain from sending particular key information.